

Dale (Zeke) Robertson  
Senior Vice President

SBC Telecommunications, Inc.  
1401 I Street, N.W.  
Suite 1100  
Washington, D.C. 20005  
Phone 202 326-8836  
Fax 202 289-3699



EX PARTE OR LATE FILED

RECEIVED

NOV 20 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

November 20, 1998

The Honorable William E. Kennard  
Chairman  
Federal Communications Commission  
1919 M Street N. W., Room 814  
Washington, D.C. 20554

Re: Reciprocal Compensation for Internet Traffic, CC Docket 96-98

Dear Chairman Kennard,

In their November 5<sup>th</sup> letter, the Information Technology Association of America (ITAA) suggested that the Commission should not assert Federal jurisdiction over "dial-up" Internet traffic and should instead use its discretion to allow the states to regulate Internet traffic as local traffic. The Commission should not follow such a course because, as described in detail below, it would be anti-competitive and conflict with the Commission's earlier actions in implementing the Telecommunications Act of 1996.

ITAA is correct in saying that "...virtually all dial-up ISP traffic is likely to be treated as jurisdictionally interstate" and thus under the jurisdiction of the FCC. However, there is no factual or legal basis for the Commission to cede its jurisdiction over Internet traffic to the states "...thereby allowing them to continue to apply the full range of state regulation, including regulation requiring the payment of reciprocal compensation." This is because:

- ITAA assumes that if the FCC were to cede its jurisdiction to the states, that the states could require reciprocal compensation payments. This is wrong because the nature of Internet usage is interstate. As the FCC found in its GTE ADSL Order,<sup>1</sup> this traffic is not

<sup>1</sup> FCC Memorandum Opinion and Order, CC Docket No. 98-79, Released October 30, 1998; Paragraphs 17 to 21.

No. of Copies rec'd 0 + 1  
List A B C D E

local and does not terminate at the ISP or CLEC within a local calling area. Since the traffic is not local, the FCC has previously found that reciprocal compensation payments cannot be applied:

"We conclude that section 251(b)(5) reciprocal compensation obligations should apply only to traffic that originates and terminates within a local area... We find that the reciprocal compensation provisions of section 251(b)(5) for transport and termination of traffic do not apply to the transport or termination of interstate or intrastate interexchange traffic."<sup>2</sup>

Thus, ITAA's reliance on the 8<sup>th</sup> Circuit's Access Reform decision is totally misplaced because that was not an analogous situation. There, the Court found that under the applicable statutes, the FCC had the "discretion to require an ISP to pay intrastate charges for its line and to pay the SLC".<sup>3</sup> Here, the FCC has already found that it has no such discretion. The FCC has found that, under Section 252(c)(2)(A), states may require reciprocal compensation only for the exchange of local traffic.

- ITAA indicates that adoption of its proposal would continue the "pro-competitive policies that have allowed the Internet to flourish." Again ITAA is wrong. The FCC policy which has allowed the Internet to flourish is not reciprocal compensation payments but the FCC mandated exemption from access charges combined with the requirement to allow ISPs to pay, in lieu of access charges, a much lower rate (the local business rate) for interconnection. Reciprocal compensation payments, on the other hand, because they create a perverse incentive to serve only ISPs and to avoid serving local customers who may make ISP calls, retard local competition and hinder the Commission's pro-competitive policy<sup>4</sup>.
- ITAA asserts that its proposal "is consistent with the approach ... used for other jurisdictionally mixed local services, such as Centrex and vertical services." This assertion is not correct. Centrex and vertical service costs are not treated as jurisdictionally mixed with the FCC deferring jurisdiction over all these costs to the states. The costs of these services are jurisdictionally assigned based on end-to-end jurisdictional usage (interstate or intrastate).<sup>5</sup> The interstate portion of these services' costs is recovered in interstate access rates. The intrastate portion of the costs is recovered in intrastate access, toll and local rates. ITAA is simply trying to argue that all of the costs of a

---

<sup>2</sup> FCC's First Report and Order, CC Docket No. 96-98, Released August 8, 1996, Paragraph 1034.

<sup>3</sup> SWBT v. FCC, No. 97-2618, at 41 (8<sup>th</sup> Cir. Aug. 19, 1998) (emphasis added).

<sup>4</sup> See SBC *ex parte* dated May 8, 1998, Tab 2.

<sup>5</sup> FCC Part 36-Jurisdictional Separations Procedures; Paragraph 36.125.

service facility should be regulated by a state if there is an intrastate tariff covering part of its costs. This theory also would mean that, because residential local rates exist, all costs of local exchange facilities (loop, local switching, etc.) should be regulated by the state. This is clearly wrong and at odds with Smith vs. Illinois. Jurisdiction, as the FCC clearly stated in the GTE ADSL Order, is determined by the end-to-end use and nature of the traffic.

- ITAA claims that its proposal is consistent with the Commission's recent GTE ADSL Order, but it clearly is not. ITAA's proposed language states, "States must require ILECs to apply the same reciprocal compensation arrangements to ISP traffic that it applies to other end user traffic."<sup>6</sup> Yet, the GTE ADSL Order clearly held that the fact that ISPs are considered end users for some purposes has no bearing on determining the jurisdictional nature of calls routed to ISPs.<sup>7</sup>

ITAA implies that the FCC could, through a new proceeding, at some time in the future, "develop a Federal regulatory regime applicable to this traffic." This is simply a transparent attempt to extend the current unlawful and inequitable situation for as long as possible. If the FCC were to delegate its regulatory authority over Internet traffic to the states, it would, in the future, be unable to undo the differing policies individual states would implement and the effect on markets of those policies. A clear indication of this fact is both the attempt by the FCC to deal with removal of the ESP exemption and the difficulty currently faced by the FCC in dealing with state-imposed reciprocal compensation for Internet usage.

SBC believes that a national policy established by the FCC is the only course consistent with the law and past FCC actions. The FCC should reaffirm that Internet traffic is interstate. Additionally the FCC should direct that meet point billing is the appropriate billing arrangement when two or more local carriers provide facilities to transport a call. Such a decision will have no impact on the existing ESP exemption. It will also allow ILECs, CLECs, and State Commissions to deal with the requirements of existing interconnection agreements, as contemplated by Chairman Kennard in his November 11<sup>th</sup> speech at NARUC.

The inappropriate imposition of reciprocal compensation payments for Internet traffic will cost SBC an estimated \$150M in 1998. SBC cannot continue to subsidize CLECs and absorb these payments. In California, the Commission recognized this fact and indicated that Pacific Bell could seek recovery from end users. If ordered to continue these unjustified payments, SBC will be forced to seek recovery in the appropriate jurisdiction.

---

<sup>6</sup> ITAA's November 5, 1998 letter to Chairman Kennard at footnote 3 (emphasis added).

<sup>7</sup> Id; Paragraph 21.

Finally, attached are two documents previously provided to the Commission's staff. The first demonstrates that from a network perspective Internet traffic is routed like long distance calls, not local calls. The second summarizes the negative effects on the marketplace of imposing reciprocal compensation on Internet traffic.

Please do not hesitate to contact me if you would like to discuss this further.

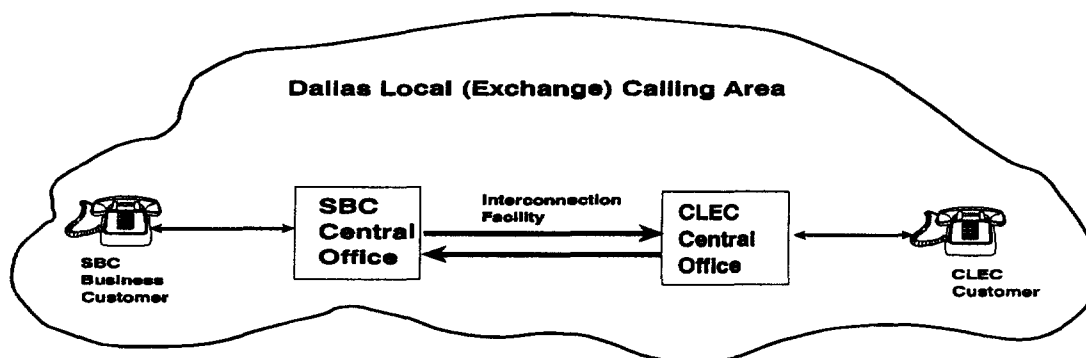
Sincerely,

A handwritten signature in black ink, reading "Zeke Robinson". The signature is written in a cursive, flowing style.

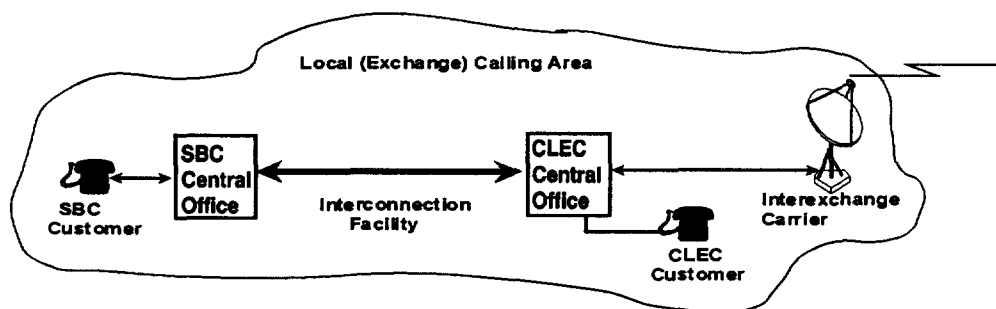
Attachments

cc: Commissioner Ness  
Commissioner Furchtgott-Roth  
Commissioner Powell  
Commissioner Tristani  
Mr. Tom Power  
Mr. Jim Casserly  
Mr. Paul Misener  
Ms. Jane Mago  
Mr. Paul Gallant  
Mr. Larry Strickling  
Mr. Jim Schlichting  
Ms. Jane Jackson  
Mr. Rich Lerner  
Ms. Magalie Salas  
Ms. Tamara Preiss  
Mr. Chris Wright  
Ms. Suzanne Tetreault  
Mr. Kevin Martin  
Mr. Kyle Dixon  
Mr. Ed Krachmer

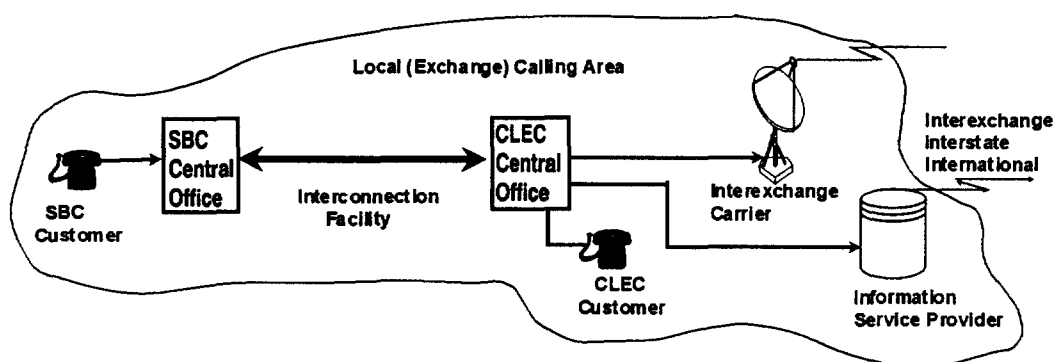
## Reciprocal Compensation Should Not Apply to Internet Traffic



Reciprocal Compensation was designed for traffic flowing between local carriers in two directions. Each carrier bills its customers for originating local calls and pays the other to terminate local calls.



For long distance calls, the long distance carrier collects revenues from end-user customers and pays each local provider for utilizing their network to complete calls.



Internet calls are routed in the same manner as long distance calls, with the Internet provider (IP) collecting revenues from the end-user. Here, however, the traffic flows only in one direction and the IP only pays the carrier (the "CLEC") connecting to the Internet provider. If reciprocal compensation is imposed on Internet traffic, SBC alone would pay CLECs \$150 million in 1998 without additional revenue to offset this new cost.

**Reciprocal Compensation for Internet Traffic**  
**Distorts Marketplace Economics**

- If imposed on Internet traffic, reciprocal compensation payments to competitive local exchange carriers ("CLECs") are estimated to reach \$600 million in 1998.
- By signing up Internet providers as customers, competitors want to bill GTE and Bell Companies for Internet traffic that all flows in one direction. Some CLECS have offered free service (or even payment) to Internet providers in order to claim reciprocal compensation payments.
- Internet calls last much longer than local voice calls. At one extreme, if an Internet connection were left up continuously, SBC could be required to pay a CLEC \$388.80 (24 hours x 60 minutes x \$.009 per minute x 30 days). SBC would collect only about \$25.00 from the Internet end-user. That is a net loss of \$364.
- Applying reciprocal compensation to Internet traffic is a disincentive to network investments and local competition for all carriers. Why would any company choose to build out a network and compete for residential customers when faced with the potential of losing money on every customer?
- At the same time the local exchange carriers are having to make significant capital investments to deliver traffic to other carriers for delivery. Bell Atlantic has estimated its trunking additions and switch upgrades for this at almost \$300 million in 1998 and double that amount in 1999.
- Bear Stearns financial analyst James Henry advised that "nearly 80% of the reciprocal compensation payments are going to other large carriers like MCI and WorldCom."
- The Maine Public Utilities Commission is investigating one CLEC for obtaining 52 NXX codes (central office routing codes), while not providing any local service. This practice allows the CLEC to avoid paying access charges, its customers avoid toll charges and the CLEC might even seek reciprocal compensation payments. Additionally, this will contribute to the exhaustion of such codes and may necessitate adding a second area code in Maine.
- The FCC has repeatedly found Internet traffic to be interstate, not local. The October 30<sup>th</sup> ruling on GTE's "DSL" tariff was the FCC's latest reaffirmation.
- When negotiating interconnection agreements *for local traffic*, SBC properly viewed Internet traffic as interstate and therefore not subject to reciprocal compensation.